

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0157

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOEL M. WHITE,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Sixteenth Judicial District Court,
Rosebud County, The Honorable John C. McKeon, Presiding

APPEARANCES:

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OTHER AUTHORITIES

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§ 1-3-208	4
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STATEMENT OF THE ISSUE

Did the district court properly deny White's postconviction motion challenging garnishment of funds by the Department of Corrections (DOC) to pay White's restitution obligation?

STATEMENT OF THE CASE AND OF THE FACTS

The Appellant, Joel Miles White, a.k.a Joel Seminole, is appealing the district court's March 2010 order denying White's postconviction motion in which White challenged the legality of the DOC's seizure of \$165.21 of a \$991.33 check, Judge McKeon presiding. The DOC's garnishment or seizure was to effectuate partial payment of restitution. (D.C. Docs. 65, 200, 201, 202.)

White was convicted of Felony Assault on a Peace Officer and Felony Criminal Mischief in 1994. He was sentenced to consecutive, suspended ten-year sentences and was ordered to pay restitution in the amount of \$480.49. (D.C. Doc. 65 at 2-3.) White's sentence was revoked in 2000, 2002, 2003, and 2006. (D.C. Docs. 101, 132, 154, 178.) The most recent revocation disposition stemmed from White's subsequent deliberate homicide conviction. (D.C. Docs. 160, 168, 178 at 3-4.) See State v. White, 2008 MT 129, 343 Mont. 66, 184 P.3d 1008.

In April 2009, White filed a postconviction motion with the district court attempting to prevent the DOC from seizing funds to effectuate payment of

White's 1994 restitution obligation. The district court denied the motion, most recently, in March 2010. White filed a notice of appeal from the district court's March 2010 order. (D.C. Docs. 186, 190, 200, 201.)

The district court denied White's postconviction motion as untimely and without merit, concluding in part:

This matter is a criminal action. Defendant was initially sentenced on January 10, 1994. Defendant's rights to postconviction relief have expired long ago. § 46-21-102, MCA.

Even so, this claim is not one for postconviction relief. Defendant is not challenging the validity of his sentence. Rather, he is challenging the DOC's authority to handle his money while incarcerated. This action is not appropriate for that challenge.

(D.C. Doc. 200 at 2, attached as Ex. 1.)

SUMMARY OF THE ARGUMENT

The district court correctly refused to relieve White of his restitution obligation, which operates like an independent civil judgment. As authorized by statute, the DOC garnished a portion of White's income to pay that judgment. White has failed to address the district court's rationale for its decision. His arguments are unsupported and without merit.

The district court must be affirmed.

ARGUMENT

THE DISTRICT COURT SHOULD BE AFFIRMED.

A. Standard of Review

The district court's ruling on White's motion was a conclusion of law subject to review for correctness. State v. Brown, 2008 MT 115, ¶ 11, 342 Mont. 476, 182 P.3d 75. White bears the burden of establishing error on appeal. State v. Swenson, 2008 MT 308, ¶ 20, 346 Mont. 34, 194 P.3d 625.

B. White Has Not Carried His Burden on Appeal.

The district court ruled that a convicted person cannot challenge the DOC's garnishment authority via the filing of a time-barred postconviction motion in a criminal cause. White completely ignores the district court's rationale for its decision. Accordingly, White has failed to satisfy his burden of proof on appeal. White cannot begin to demonstrate error without addressing the actual reasons for the district court's decision.

Turning to the arguments White has made, there is no merit to White's assertion that his restitution obligation was extinguished by his failure to make payment or by the State's purported failure to force his compliance. As the State argued in State v. Eisenman (No. DA 08-0406), the DOC was authorized under Mont. Code Ann. § 46-18-244(6)(a) to take a percentage of prison wages and other money in White's DOC account for the purpose of paying down his

restitution obligation. State v. Brown, 2008 MT 115, ¶ 25, 342 Mont. 476, 182 P.3d 75. In Brown the Court held that “restitution obligations have always been in substance, civil judgments,” and that “[t]he duty to pay full restitution under the sentence remains with the offender *until full restitution is paid*.” Brown, ¶ 18 (emphasis in original) (quoting Mont. Code Ann. § 46-18-241(1) (1997)).

The DOC’s garnishment authority in no way conflicts with White’s court-ordered restitution obligation. As the district court observed in an earlier August 2009 order, White’s contention that his restitution obligation was required to be paid within five years was unavailing “for the simple reason that the plain and unambiguous language of § 46-18-241(1), MCA, continues the restitution obligation and corresponding civil judgment until it is paid in full.” (D.C. Doc. 190 at 2.) Indeed, Mont. Code Ann. § 46-18-244(6)(a) provides that the DOC “shall” take a percentage of the prisoner’s funds to pay restitution; and, as this Court emphasized in Brown, ¶ 24, the DOC’s mandatory authority applies to “any existing restitution obligation.”

Finally, it is axiomatic that White cannot take advantage of his own wrong. Mont. Code Ann. § 1-3-208. White owes restitution. If he had focused on paying his now 15-year-old restitution obligation rather than violating and committing more crimes, including deliberate homicide, there would have been no need for the DOC to exercise its § 46-18-244 authority.

CONCLUSION

The district court should be affirmed.

Respectfully submitted this 29th day of June, 2010.

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By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Appellee to be mailed to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

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APPENDIX

D.C. Doc. 200, Order to Deny Defendant's Postconviction MotionsEx. 1